

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1085 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SHANTILAL M KIKANI

Appearance:

MR SN SHELAT for Petitioner

MR HK RATHOD for Respondent No. 1

MR MI HAVA for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER

Date of decision: 12/07/96

ORAL JUDGEMENT

This petition is filed against the order passed by the Conciliation Officer and the Assistant Labour Commissioner, Banaskantha on October 17, 1984, Annexure.A to the petition. By the impugned communication the Conciliation Officer did not grant approval of dismissal

of the workman respondent no.1 herein.

Respondent no.1 was working as Bus Conductor with the petitioner Corporation. It is the case of the petitioner that the first respondent was found to have committed acts of misconduct for which he was served with a charge-sheet. It was alleged that on January 27, 1984 in the course of his duty as Bus Conductor in the bus plying between Savarkundala to Piparadi he had collected fare from all the passengers but did not issue tickets till the checking took place and that he attempted to misappropriate the said amount. The petitioner was offered reasonable opportunity to defend himself. An inquiry was held and he was found guilty. Charges were established. On the basis of the report submitted by the Enquiry Officer, a show cause notice was issued and disciplinary authority by an order dt. June 29, 1984 passed an order dismissing respondent no.1 from service. Since reference was pending, approval was sought by the Corporation by application dt. 28th August 1984. It appears that the Conciliation Officer did not grant approval only on the ground that though notice pay was paid to the workman, house rent allowance was not paid and, therefore, it could not be said that the order of dismissal was in accordance with law.

Now, looking to the definition of "wages" it was not disputed and cannot be disputed that house rent becomes part of the wages as defined in Section 2 of the Act. It was, however, contended that the order passed by the Conciliation Officer is contrary to law and unlawful inasmuch as firstly, before the order was passed the amount of house-rent was paid and secondly taking into account underlying object of such payment which is required to be kept in mind when that object was achieved, it was not open to the Conciliation Officer to refuse sanction.

nnnnMr.Rathod,for the first respondent on the other hand supported the order passed by the Conciliation Officer. In this connection he placed reliance on the decision of the Division Bench of this court (Coram: S.B.Majmudar (as he then was) & I.C.Bhatt J) dt. August 14, 1986, in Spl.C.A.No.4353/85 with Spl.C.A.No.4356 of 1985; Spl.C.A.Nos.2151 of 1986 and Spl.C.A.No.2712 of 1987 decided by this court (Coram: S.B.Majmudar & A.P.Ravani JJ(as they were then)) dt. June 19, 1987. Looking to the above decisions, it is clear that the point is no more res integra and finally concluded by this court. In similar circumstances, when the payment was not made before the approval was sought, this court

has taken a view that dismissal cannot be said to be in accordance with law and the action of not approving such order cannot be said to be illegal or contrary to law. It is not even the contention of the petitioner that on August 28, 1994, when the application was made and permission was sought, payment was made. In my opinion, it is immaterial whether at the time of passing of the impugned order or after the application payment was made. Since, it was not made on the day on which application was made, the order passed by the Conciliation Officer cannot be said to be contrary to law. I do not see any error much less an error apparent on the face of the record which requires interference by this court. Hence, the petition requires to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, no order as to costs. Rule is discharged.

Dt. 12.7.96. (C.K.THAKKER J.)
